

AMENDED IN SENATE MAY 9, 2013
AMENDED IN SENATE MAY 1, 2013
AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 377

Introduced by Senator Lieu

February 20, 2013

An act to amend Sections 1726, 1741, 1771.2, and 1773.5 of the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 377, as amended, Lieu. Public works: project determinations: wage and penalty assessments.

Existing law defines the term “public works” for purposes of requirements regarding the payment of prevailing wages, the regulation of working hours, and the securing of workers’ compensation for public works projects. Under existing law, the body awarding the contract for a public work is required to report any suspected violations of requirements relating to public works projects to the Labor Commissioner.

This bill would require a political subdivision that believes a project in which it is interested, as specified, is not a public work, to provide notice, as specified, to the Director of Industrial Relations, the Labor Commissioner, and any other person who requests that notice.

Existing law authorizes the Director of Industrial Relations to establish rules and regulations for the purpose of carrying out public works requirements, including, but not limited to, the responsibilities and duties of awarding bodies relating to public works projects.

This bill would require the director to determine, within 60 days of receipt of a request for a determination, except as specified, whether a project is a public work. This bill would require an administrative appeal of that determination to be made within 30 days of the date of the determination, and would require the director to issue a determination on an appeal within 30 days after the receipt of the appeal, except as specified. This bill would grant to the director quasi-legislative authority to determine coverage of projects under prevailing wage requirements, and provide that a final determination on any appeal is subject to judicial review.

Existing law requires the Labor Commissioner to issue a civil wage and penalty assessment to a contractor or subcontractor, or both, if, after an investigation, the commissioner determines there has been a violation of the laws regulating public works projects, including the payment of prevailing wages. The assessment is required to be served within 180 days, with exceptions, after the filing of a valid notice of completion in the county where the public work was performed, as specified. Under existing law, each contractor and subcontractor is required to keep accurate payroll records, as prescribed, that are certified and available for inspection, as specified.

~~This bill would require the assessment to be served within 180 days of the date of the determination of the violation. This bill would toll the period for service of assessments for the period of time required by the Director of Industrial Relations to make a determination of whether the project is a public work, as specified. The bill would also toll the period for the period of time that a contractor or subcontractor fails to provide certified payroll records pursuant to a request from the Labor Commissioner, a joint labor-management committee, or an approved labor compliance program.~~

Existing law authorizes a joint labor-management committee, established pursuant to a specified provision of federal law, to bring an action against any employer who fails to pay prevailing wages as required by state law. The action is required to commence not later than 180 days after the filing of a valid notice of completion in the county where the public work was performed or not later than 180 days after acceptance of the public work, whichever occurs later.

This bill would toll the period for commencing an action during the period of time in which a request to determine whether a project is a public work, including the period of a timely administrative appeal, is pending before the director, as specified. This bill would also toll the

period for the period of time that a contractor or subcontractor fails to provide certified payroll records pursuant to a request from a joint labor-management committee.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that the process
2 for the Director of Industrial Relations to determine the existence
3 of a public work and to decide administrative appeals from those
4 determinations has created unacceptable delays and prejudice to
5 the enforcement of the public works law, often resulting in the
6 expiration of the statute of limitation for the identification and
7 collection of wage and penalty assessments. As a result, wage theft
8 has occurred because workers are not paid prevailing wage rates
9 and the time for assessment has expired. Further, there has been
10 an incentive to some developers, contractors, and public bodies to
11 engage in expensive and time-consuming litigation in efforts to
12 extend the time for determining the existence of a public work.
13 This litigation is often a needless expense to the state. In addition,
14 public bodies, developers, contractors, and others are entitled to a
15 determination of whether a project is a public work as early as
16 possible so that the costs of the project and the duties of the parties
17 under the law may be known as early as possible. Thus, this act is
18 necessary to ensure the actual receipt of proper wages, to reduce
19 administrative and litigation costs to the state and others, and to
20 provide early guidance to all interested parties.

21 SEC. 2. Section 1726 of the Labor Code is amended to read:

22 1726. (a) The body awarding the contract for public work shall
23 take cognizance of violations of this chapter committed in the
24 course of the execution of the contract, and shall promptly report
25 any suspected violations to the Labor Commissioner.

26 (b) If the awarding body determines as a result of its own
27 investigation that there has been a violation of this chapter and
28 withholds contract payments, the procedures in Section 1771.6
29 shall be followed.

30 (c) A contractor may bring an action in a court of competent
31 jurisdiction to recover from an awarding body the difference
32 between the wages actually paid to an employee and the wages

1 that were required to be paid to an employee under this chapter,
2 any penalties required to be paid under this chapter, and costs and
3 attorney's fees related to this action, if either of the following is
4 true:

5 (1) The awarding body previously affirmatively represented to
6 the contractor in writing, in the call for bids, or otherwise, that the
7 work to be covered by the bid or contract was not a "public work,"
8 as defined in this chapter.

9 (2) The awarding body received actual written notice from the
10 Department of Industrial Relations that the work to be covered by
11 the bid or contract is a "public work," as defined in this chapter,
12 and failed to disclose that information to the contractor before the
13 bid opening or awarding of the contract.

14 (d) When a political subdivision believes that a project in which
15 it is interested is not a public work, it shall notify the Director of
16 Industrial Relations, the Labor Commissioner, and any person who
17 has asked for that notice, together with the reason therefor, within
18 30 days of the commencement of any work estimated to last six
19 months or more, and before the commencement of any work if a
20 project is not estimated to exceed six months. For purposes of this
21 section, a political subdivision is interested in a project if it has a
22 proprietary interest, and not only a regulatory interest, in the
23 project. This notice shall be a public record. The director shall
24 create necessary forms and adopt regulations to implement this
25 subdivision.

26 SEC. 3. Section 1741 of the Labor Code is amended to read:

27 1741. (a) If the Labor Commissioner or his or her designee
28 determines after an investigation that there has been a violation of
29 this chapter, the Labor Commissioner shall with reasonable
30 promptness issue a civil wage and penalty assessment to the
31 contractor or subcontractor or both. The assessment shall be in
32 writing and shall describe the nature of the violation and the
33 amount of wages, penalties, and forfeitures due and shall include
34 the basis for the assessment. The assessment shall be served ~~within~~
35 ~~not later than 180 days of the date of the determination of a~~
36 ~~violation~~ *after the filing of a valid notice of completion in the office*
37 *of the county recorder in each county in which the public work or*
38 *some part thereof was performed, or not later than 180 days after*
39 *acceptance of the public work, whichever occurs last. However,*
40 *if the assessment is served after the expiration of this 180-day*

period, but before the expiration of an additional 180 days, and the awarding body has not yet made full payment to the contractor; the assessment is valid up to the amount of the funds retained.

Service of the assessment shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor, subcontractor, and awarding body. The assessment shall advise the contractor and subcontractor of the procedure for obtaining review of the assessment. The Labor Commissioner shall, to the extent practicable, ascertain the identity of any bonding company issuing a bond that secures the payment of wages covered by the assessment and any surety on a bond, and shall serve a copy of the assessment by certified mail to the bonding company or surety at the same time service is made to the contractor, subcontractor, and awarding body. However, no bonding company or surety shall be relieved of its responsibilities because it failed to receive notice from the Labor Commissioner.

(b) Interest shall accrue on all due and unpaid wages at the rate described in subdivision (b) of Section 3289 of the Civil Code. The interest shall accrue from the date that the wages were due and payable, as provided in Part 7 (commencing with Section 1720) of Division 2, until the wages are paid.

(c) (1) The Labor Commissioner shall maintain a public list of the names of each contractor and subcontractor who has been found to have committed a willful violation of Section 1775 or to whom a final order, which is no longer subject to judicial review, has been issued.

(2) The list shall include the date of each assessment, the amount of wages and penalties assessed, and the amount collected.

(3) The list shall be updated at least quarterly, and the contractor's or subcontractor's name shall remain on that list until the assessment is satisfied, or for a period of three years beginning from the date of the issuance of the assessment, whichever is later.

(d) The period for service of assessments shall be tolled for the period of time required by the Director of Industrial Relations to determine whether a project is a public work, including a determination on administrative appeal, if applicable, pursuant to subdivisions (b) and (c) of Section 1773.5. The period for service of assessments shall also be tolled for the period of time that a contractor or subcontractor fails to provide in a timely manner certified payroll records pursuant to a request from the Labor

1 Commissioner or a joint labor-management committee under
2 Section 1776, or an approved labor compliance program under
3 Section 1771.5 or 1771.7.

4 SEC. 4. Section 1771.2 of the Labor Code is amended to read:

5 1771.2. (a) A joint labor-management committee established
6 pursuant to the federal Labor Management Cooperation Act of
7 1978 (Section 175a of Title 29 of the United States Code) may
8 bring an action in any court of competent jurisdiction against an
9 employer that fails to pay the prevailing wage to its employees,
10 as required by this article. This action shall be commenced not
11 later than 180 days after the filing of a valid notice of completion
12 in the office of the county recorder in each county in which the
13 public work or some part thereof was performed, or not later than
14 180 days after acceptance of the public work, whichever last
15 occurs.

16 (b) The period for commencing an action shall be tolled during
17 the period of time in which a request to determine whether a
18 specific project is a public work is pending before the Director of
19 Industrial Relations, including the period of a timely administrative
20 appeal to the director from that determination by an interested
21 party, if applicable. The period for commencing an action shall
22 also be tolled for the period of time that a contractor or
23 subcontractor fails to provide in a timely manner certified payroll
24 records pursuant to a request from a joint labor-management
25 committee under Section 1776.

26 SEC. 5. Section 1773.5 of the Labor Code is amended to read:

27 1773.5. (a) The Director of Industrial Relations may establish
28 rules and regulations for the purpose of carrying out this chapter,
29 including, but not limited to, the responsibilities and duties of
30 awarding bodies under this chapter.

31 (b) The director shall determine whether a specific project is a
32 public work within 60 days of the receipt of a request for a
33 determination. If the director deems that the complexity of the
34 request requires additional time to make that determination, the
35 director may have up to an additional 60 days if he or she certifies
36 in writing to the requestor, and any interested awarding body, the
37 reasons for the extension. If the requestor is not an awarding body,
38 the requester shall serve a copy of the request upon the awarding
39 body, in which event the awarding body shall, within 15 days of
40 its receipt, advise the director of its position regarding the request.

1 (c) If an administrative appeal of the director's determination
2 is made, it shall be made within 30 days of the date of the
3 determination. The director shall issue a determination on the
4 administrative appeal within 30 days after receipt of the appeal.
5 ~~The director may have up to an additional 60 days if appeal, unless~~
6 he or she certifies in writing to the party requesting the appeal the
7 ~~reasons for the extension~~ *reason for additional time, in which case*
8 *the director's determination shall issue within 60 days of the*
9 *appeal.*

10 (d) The director shall have quasi-legislative authority to
11 determine coverage of projects under prevailing wage laws. A
12 final determination on any appeal is subject to judicial review
13 pursuant to Section 1085 of the Code of Civil Procedure.